

REPORT No. 124/11¹
DECISION TO ARCHIVE
CASE 11.786
COLOMBIA
October 19, 2011

ALLEGED VICTIMS: José Ángel Aparicio Gómez, María del Carmen Orozco Pérez, José Ángel Aparicio Orozco, and Ángela Patricia Aparicio Orozco

PETITIONER: José Ángel Aparicio Gómez

ALLEGED VIOLATIONS: Articles 5, 8, and 25 of the American Convention on Human Rights

DATE OF INITIAL PROCESSING: August 5, 1997

I. POSITION OF THE PETITIONER

1. On April 1, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition from José Ángel Aparicio Gómez (hereinafter “the petitioner”) which alleged that the Colombian State was responsible for alleged acts of torture perpetrated upon him, upon his wife, María del Carmen Orozco Pérez, and upon their two children, the minors José Ángel Aparicio Orozco and Ángela Patricia Aparicio Orozco, by members of the Central Judicial and Intelligence Police Department (DIJIN). It also claimed that the State was responsible for a lack of due diligence in investigating the events and punishing those responsible, since the trial was conducted under military criminal jurisdiction.

2. The petitioner alleged that he worked as a member of the National Police (hereinafter “PN”) of Santafé de Bogotá and that, in January 1992, he began to receive threats against him and his family from alleged agents of the PN’s Antinarcotics Department. He maintained that he reported the events to the Director of the PN. He alleged that, on March 21, 1992, those State agents went to his house and took him, under duress, to an unidentified place where his wife and children were tortured.

3. He stated that, upon arriving at the unknown location, he was detained by DIJIN agents. He alleged that his wife and children were battered and subjected to electric shocks and underwater asphyxiation.

4. The petitioner alleged that he submitted a complaint regarding the events described, but that, although the ordinary criminal courts had jurisdiction over this case, the investigations had been initiated by the 90th Military Criminal Trial Court. He stated that, on February 19, 1993, the Court declined to issue an order for the preventive detention of the alleged perpetrators. He also stated that, on September 27, 1994, the Superior Military Court ratified the cessation of the proceedings and that, on November 29, 1994, it ordered that the case be archived.

¹ As provided in Article 17.2 of the Rules of Procedure of the IACHR, Commission member Rodrigo Escobar Gil, a Colombian national, participated neither in the discussions nor in the decision on this petition.

5. The understanding of the IACHR is that the petitioner alleges violations of the rights to humane treatment, a fair trial, and judicial protection enshrined in Articles 5, 8, and 25 of the American Convention.

II. POSITION OF THE STATE

6. In response to the petitioner's complaint, the State argued that the petition was inadmissible because the situation of the alleged victim and his family did not constitute a violation and that, should the petition be admitted, the Commission would be acting as a court of fourth instance.

7. As for the facts, the State maintained that María López Pineda lodged a criminal complaint against José Ángel Aparicio Gómez for the crime of extortion and that, on March 21, 1992, the DIJIN proceeded to arrest him in the act, the petitioner having made an appointment with Ms. López Pineda "in order for her to give him money in exchange for not being linked to drug trafficking." The State also alleged that the wife and children of the petitioner were never detained or attacked, which was supported by the medical examination reports.

8. The State indicated that, on March 27, 1992, the 90th Military Criminal Trial Court ordered preventive detention on grounds of extortion and requested that the alleged victim's active membership in the PN be suspended. It stated that, on April 9, 1992, that Court denied a motion to set aside the ruling of March 27, 1992, and established that the investigation should continue under ordinary jurisdiction since it was not related to his duties. It stated that the investigation was transferred to the Auxiliary Criminal Trial Court; that, on March 15, 1993, the 9th Circuit Criminal Court convicted the alleged victim of extortion and falsifying a government document; and that this decision was ratified by the Superior Court of Bogotá and was not quashed by the Supreme Court of Justice.

9. The State also reported that an investigation of the petitioner remained pending with the 137th Inspector's Office, Economic Property Unit 2, for extortion, use of a falsified government document, and falsely claiming to hold authority or an office, while giving or offering bribes; and that on August 6, 1992, the Office of the Chief of the Transportation Division of the PN's Administrative Directorate requested that the General Directorate of the PN remove him permanently from the institution, with a notation of misconduct. It stated that the petitioner submitted an appeal of that decision, which was denied on September 14, 1992, when he was separated permanently from the PN.

10. The State alleged that the complaint of alleged abuses of his family by members of the DIJIN during his arrest was aired under military criminal jurisdiction, which was competent to hear it because the complaint referred to events connected with the duties of those agents. In that regard, the State said that the three agents underwent a military trial on accusations of theft, torture, and abuse of authority. It stated that, on February 24, 1994, the Judge of First Instance, Assistant Inspector 57 of the Office of the PN Inspector General, ordered that the proceedings be halted because the reported events had not taken place. It also stated that, under a complaint lodged by the petitioner with the Director of Judicial Police, an investigation was instituted before the 90th Military Criminal Trial Court, and that this was archived in November 1994.

11. The State also indicated that, in response to the events, the Office of the Attorney General of Colombia carried out seven other investigations, in which it was determined that the events described never took place and the complaints lodged by José Ángel Aparicio

Gómez² were distorted. Consequently, the State believes that violations of the American Convention did not take place. It also maintained that the Commission is not a court of fourth instance and therefore could not rule on this case, since the complaints were resolved through domestic measures in accordance with due process.

12. Finally, the State alleged that the petitioner did not lodge a direct motion for redress with the administrative court and thus relinquished any claim to reparations.

III. PROCESSING BY THE COMMISSION

13. The petition was recorded under the number 11.786. After conducting a preliminary analysis of the petition, on August 5, 1997, the IACHR proceeded to transmit it to the State for comments. On September 19, 1997, the petitioner submitted additional information, which was transmitted to the State for comments.

14. On December 12, 1997, the State requested an extension of the deadline for presenting its comments, which was granted by the IACHR. On July 16, 1998, the Commission reiterated its request to the State for information. On April 16, 2009, the Commission sent a communication to both parties requesting updated information.

15. The State submitted observations and additional information on December 14, 2009, and February 16, 2010, respectively. Both communications were transmitted to the petitioner, but were returned to the IACHR because the address given was incorrect. On March 26, 2010, the State submitted the attachments to its prior communication, which were transmitted to the petitioner on April 16, 2010.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

16. Both Article 48.1.b of the American Convention and Article 42 of the Rules of Procedure of the Commission provide that the IACHR, in its processing of a petition, once the information has been received, or the deadline has lapsed and the information has not been received, shall ascertain whether grounds for the petition or communication existed or continue to exist and, should it find that they do not, shall order the case to be archived.

17. This petition alleged violations of the rights enshrined in Articles 5, 8, and 25 of the American Convention. For its part, the State maintained that violations of the American Convention had not occurred, since the claims were decided in accordance with due process, and that the Commission should not act as a court of fourth instance.

18. In these proceedings, the petitioner has not communicated with the Commission since 1997. Over these 12 years, he has failed to provide the IACHR with new contact information; the Commission, therefore, does not have up-to-date information. Under these circumstances, it is impossible to determine whether the grounds for the initial petition still exist.

² The first pertained to personal injury, and was set aside in August 1994. The second pertained to physical and psychological torture. It was joined with the third, pertaining to an attempt at forced disappearance, threats, and harassment. The third, in turn, was joined with the fourth investigation, pertaining to the alleged torture of María del Carmen Orozco Pérez and her children. The fifth investigation, begun in February 1995 and pertaining to physical assault on Ms. Orozco Pérez and her children, was archived under the principle of *res judicata* in April 2005. The sixth, for personal injury to the alleged victims, is reported as pending with the Office of the Prosecutor-Delegate for the National Police. The seventh was archived on procedural grounds in 1997.

Therefore, under Article 48.1.b of the Convention and under Article 42 of the Rules of Procedure of the IACHR, the Commission has decided to archive this petition.

Done and signed in the city of Washington, D.C., on the 19th day of October 2011.
(Signed): José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González and María Silvia Guillén, Commissioners.